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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

SYCAMORE RIDGE APARTMENTS, LLC,

Plaintiff and Appellant,

v.

WILLIAM H. NAUMANN, et al.,

Defendants and Respondents.

D051642

(Super. Ct. No. GIC875608)

APPEAL from orders of the Superior Court of San Diego County, Patricia Yim Cowett, Judge. Reversed and remanded with directions.

This is the third of three appeals involving plaintiff Sycamore Ridge Apartments, LLC (Sycamore Ridge) and defendants including Sycamore Ridge tenants and the attorneys who represented them in lawsuits against Sycamore Ridge. The tenants' lawsuits led to malicious prosecution litigation by Sycamore Ridge and special motions

to strike (Code Civ. Proc., § 425.16)¹ (anti-SLAPP motions) by the defendants. The three appeals concern rulings on the anti-SLAPP motions and related awards of attorneys' fees and costs. In the instant appeal, the parties have filed a joint application for reversal of the orders and remand of the action to the superior court. (§ 128, subd. (a)(8).) We accept the stipulation.

BACKGROUND

In the first appeal, this court reversed a November 17, 2005, order granting the anti-SLAPP motions of defendants Jeffrey LaFave and LaFave & Rice (the LaFave defendants) and Megan Pukahi, William H. Naumann, Christopher H. Hagen, Lisa D. Stepp, Steven M. Nunez, and Naumann & Levine LLP. (*Sycamore Ridge Apartments LLC v. Naumann* (Apr. 6, 2007, D047868) [nonpub. opn.].) The disposition stated: "Any subsequent orders awarding attorney fees and/or costs to the defendants as the prevailing parties on the anti-SLAPP motions are also reversed. Costs are awarded to appellant Sycamore Ridge." The Supreme Court denied review.

On December 17, 2007, in appeals also arising out of the same trial court case as the first appeal, this court affirmed a December 9, 2005, order denying the anti-SLAPP motion of defendants Shirley Powell, Naumann, Hagen, Stepp, Nunez, and Naumann & Levine LLP and reversed a December 9 order granting the anti-SLAPP motion of the LaFave defendants. (*Sycamore Ridge Apartments LLC v. Naumann* (2007) 157 Cal.App.4th 1385 [D047796].) This court also reversed the order awarding fees

¹ All further statutory references are to the Code of Civil Procedure.

and/or costs to the LaFave defendants as the prevailing parties and awarded costs to appellant Sycamore Ridge. (*Id.* at pp. 1412-1413.) The Supreme Court denied review.

The instant appeal arises out of a different malicious prosecution action brought by Sycamore Ridge against Naumann, the LaFave defendants, Hagen, Stepp, Nunez, Naumann & Levine LLP, and tenants Adrian Cundiff, Gabriela Guzman, Michelle Godwin, Brooke Archilca, Michael McGowan, Alex Pukahi, Christopher Thomas, Therese Houston, Donna Leigh, Clyde Young, Chandra Stevenson, Frederick Rogers, David Miranda, and Tiffany Rodzach. Sycamore Ridge appeals two orders: (1) the September 7, 2007, order granting the anti-SLAPP motions of William H. Naumann, the LaFave defendants, Hagen, Nunez, Stepp, Naumann & Levine LLP, Cundiff, Archilca, Alex Pukahi, Thomas, Houston, Young, Stevenson, Rogers, and Rodzach (i.e., all of the defendants except Guzman, Godwin, McGowan, Leigh, and Miranda) and (2) the November 16 order awarding fees and costs to the prevailing parties.

Sycamore Ridge, the LaFave defendants, and "William H. Naumann et al." filed a "joint application for reversal of judgment and remand of action to the superior court." On June 17, 2008, this court denied the application because it met none of the requirements of section 128, subdivision (a)(8). Counsel for Sycamore Ridge filed a letter seeking clarification or modification of the June 17 order. This court construed the letter as a motion for clarification or modification and denied the motion.

Sycamore Ridge, the LaFave defendants, and "William H. Naumann et al."² have now filed a "second joint application for reversal of judgment and remand of action to the superior court." As in the first application, they request that the judgment be reversed, the case be remanded, and the remittitur issue forthwith; the orders granting the anti-SLAPP motions and fee awards be vacated; the trial court enter new orders denying the anti-SLAPP motions; and each party bear its own costs. This application differs from the previous one in three respects. First, there is an expanded memorandum of points and authorities. Second, the parties have filed a two-volume Exhibit D assertedly consisting of "all relevant papers from the Superior Court." Third, there is a joint declaration of counsel stating: (1) the points and authorities present a complete and accurate description of the legal claims, rulings, and practical consequences of the rulings for nonparties and the public; (2) the reason for the stipulated reversal is to expedite the final determination of the three related cases; (3) to declarants' knowledge, there are no pending disciplinary proceedings against any attorney in this action and no other proceedings that could be affected by the stipulated reversal; (4) because the stipulation resolves only the anti-SLAPP motions in the three cases and does not involve the current settlement of the pending cases, there is no issue whether a settlement could have been reached earlier; (5) the complete record is presented with this application; and (6) declarants are not aware of any possible prejudice to a third party or the public.

² "William H. Naumann et al." apparently includes William H. Naumann, Hagen, Nunez, Stepp, Naumann & Levine LLP, Cundiff, Archilca, Alex Pukahi, Thomas, Houston, Young, Stevenson, Rogers, and Rodzach. The attorneys for the foregoing parties have signed the joint application.

DISCUSSION

Section 128, subdivision (a)(8) provides: "An appellate court shall not reverse or vacate a duly entered judgment upon an agreement or stipulation of the parties unless the court finds both of the following: (A) There is no reasonable possibility that the interests of nonparties or the public will be adversely affected by the reversal. [¶] (B) The reasons of the parties for requesting reversal outweigh the erosion of public trust that may result from the nullification of a judgment and the risk that the availability of stipulated reversal will reduce the incentive for pretrial settlement." (§ 128, subd. (a)(8).) "The parties must . . . submit memoranda of points and authorities and declarations and other documentary evidence persuasively demonstrating that reversal of the judgment in question will not adversely affect nonparties or the public, erode public trust, or reduce the incentive for pretrial settlement" (*Hardisty v. Hinton & Alfert* (2004) 124 Cal.App.4th 999, 1007.)

Here, the joint declaration states that the trial court's anti-SLAPP and concomitant fee and cost orders are inconsistent with the published opinion on similar facts, the stipulated reversal will simply eliminate those orders expeditiously and allow resolution of the case, nonparties will be unaffected, and the public will not be adversely affected. In light of that declaration and the relevant statutory and case law, we conclude "[t]here is no reasonable possibility that the interests of nonparties or the public will be adversely affected by the reversal" and "[t]he reasons of the parties for requesting reversal outweigh the erosion of public trust that may result from the nullification of a judgment and the risk that the availability of stipulated reversal will reduce the incentive for pretrial

settlement." (§ 128, subd. (a)(8).) "When lawyers responsibly settle litigation, public trust in the courts is advanced. Hence, in exercising discretion on a case-by-case basis in evaluating whether the three factors in section 128, subdivision (a)(8) are present, it is relevant that reversible error occurred but it is not a prerequisite to the judicial acceptance of a stipulated reversal in a case such as this" (*Union Bank of California v. Braille Institute of America* (2001) 92 Cal.App.4th 1324, 1331.)

DISPOSITION

Based on the stipulation of the parties under section 128, subdivision (a)(8), the orders are reversed and the case is remanded to the trial court with directions to vacate the orders granting the anti-SLAPP motions and fee awards and enter new orders denying the anti-SLAPP motions. The remittitur shall issue immediately. Each party shall bear its own costs.

BENKE, Acting P. J.

WE CONCUR:

HALLER, J.

O'ROURKE, J.